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Attorney Docket: 008312-0281351
Client Reference: T4TY-01S0006-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:
YONEZAWA ET AL.
Application No.: 09/873,408

Confirmation Number: 1821

Group Art Unit: 2653

Filed: June 5, 2001

Examiner: B. VUONG

Title: OPTICAL DISK APPARATUS AND METHOD OF ADJUSTING THE SAME

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Election of Species Requirement dated September 20, 2004, Applicants hereby elect with traverse Species I (Figs. 10 and 16) for further prosecution. It is respectfully submitted that claims 1-27 read on the elected Species I (Figures 10 and 16). Furthermore, at least claims 1, 2, 5 and 13-15 are generic to all species.

Applicants note that the September 20, 2004 Election of Species Requirement is directed to only Figures 10-18. The Election of Species Requirement does not address the subject matter set forth in Figures 1-3, 5-9, 19 and 20. Applicants respectfully submit that the subject matter of all of the species identified by the Examiner (i.e., Figures 11-15, 17 and 18) and the species not identified by the Examiner (i.e., Figures 1-3, 5-9, 19 and 20) is sufficiently related that a thorough search and examination for the subject matter of any one species would necessarily encompass the search and examination of the remaining species. The application can thus be searched and examined without serious burden. MPEP § 803 sets forth the criteria for a proper requirement for restriction: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner. As also stated in MPEP § 803, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (Emphasis added.) As discussed above, MPEP § 802.02 defines restriction as both restriction between distinct inventions and

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election of species requirements, it is clear that the requirement of a serious burden equally applies to election of species requirements. Applicants submit that a serious burden does not exist in the present application at least with respect to the species, set forth in the remaining figures. Applicants respectfully submit that all species should be examined at this time to avoid duplicative examination by the Patent Office and unnecessary expense to Applicants. Therefore, reconsideration and withdrawal of the Election of Species Requirement are respectfully requested. A prompt and favorable examination on the merits is respectfully requested.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:
MINORU YONEZAWA ET AL.

Confirmation No: 1821

Application No.: 09/873,408

Group Art Unit: 2653

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P.O. Box 1450
Alexandria, VA 22313-1450

**CERTIFICATION OF FACSIMILE TRANSMISSION
UNDER 37 C.F.R. §1.8**

I hereby certify that the following papers are being facsimile
transmitted to the Patent and Trademark Office at (703) 872-9306 on the date
shown below: Response to Restriction of Species Election

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